

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RICHARD LAWRENCE FRIEMAN *

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Civil No. JFM-09-2903

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FLIPPING FOR PHONICS, INC. *

MEMORANDUM

Defendant has filed a motion to dismiss this action for lack of personal jurisdiction. The motion will be granted.

Defendant is a small business whose only office is in Boca Raton, Florida. Defendant produces and markets children's books and other educational materials. Plaintiff's mother informed Ellen Steiner, the vice president of defendant, that plaintiff was an illustrator. In 2007, at a gathering in Florida hosted by plaintiff's mother, Steiner approached plaintiff and told him that defendant was looking for someone to provide illustrations and stories for reading materials to be used in connection with a product being developed by defendant. Plaintiff gave Steiner his contact information.

In October 2007, Steiner sent defendant an email describing the nature of plaintiff's contemplated relationship with defendant. Specifically, the email stated that plaintiff would send "art work, illustrations, and written workboards" to Florida to be used in connection with defendant's materials. Plaintiff signed the email and faxed it to defendant. Steiner signed and accepted the document on defendant's behalf in Florida.

None of defendant's representatives have ever visited Maryland for business reasons, and defendant has no offices, employees, or bank accounts in Maryland. Plaintiff did perform some

work for defendant, including attending a conference in the District of Columbia, for which he was compensated by checks sent to Maryland. However, ultimately defendant concluded that plaintiff's style was inconsistent with its product and informed plaintiff that defendant would not be using any of his work in its books and materials. Plaintiff then instituted this action based on the October 2007 email, seeking recovery for 25% of defendant's profits for an unspecified period.

Plaintiff relies upon §6-103(b)(1) of the Maryland long arm statute as a basis for asserting personal jurisdiction over defendant. That provision provides that "a [Maryland] court may exercise personal jurisdiction over a person, who directly or by an agent . . . transacts any business or performs any character of work or service in the State." Maryland Courts and Judicial Proceedings Art. §6-103(b)(1). Plaintiff argues that defendant's initiation of contact with plaintiff, entering into an agreement with him, sending emails to him in Maryland, and contacting him on numerous occasions by telephone is sufficient to constitute "transact[ing] business in Maryland. This argument has no merit whatsoever. Although a vice president defendant did approach plaintiff about a possible relationship between plaintiff and defendant, she did so after having been informed by plaintiff's mother that plaintiff was an illustrator. More importantly, the contact was made not in Maryland but in Florida. The October 2007 email was executed by defendant in Florida, and plaintiff has cited no authority to support the proposition that merely sending emails to someone in Maryland or placing telephone calls to him in Maryland from out of state meets the transaction of business test.

Further, to the extent that plaintiff relies upon his own work that he did for defendant in Maryland, his position was rejected by the Maryland Court of Special Appeals in *Zavian v. Foudy*, 130 Md. App. 689 (2000). There, the court expressly stated that a person's performance

of professional services in Maryland would not support the assertion of personal jurisdiction over the corporation or other person for whom plaintiff performed the work in an action between the two. *Id.* at 700. Moreover, plaintiff has alleged no facts that would support an inference or a conclusion that he was defendant's "agent," as opposed to an independent contractor. To accept his argument would, in effect, subject an out of state defendant to jurisdiction in Maryland solely because of plaintiff's unilateral activities in Maryland, regardless of the nature of the relationships between the plaintiff and the defendant and the total absence of any other contacts between defendant and Maryland.

A separate order granting defendant's motion and dismissing this action for lack of personal jurisdiction is being entered herewith.

DATE: March 4, 2010

/s/
J. Frederick Motz
United States District Judge